

PTO Form 1957 (Rev 9/05)

OMB No. 0651-0050 (Exp. 04/2009)

Response to Office Action

The table below presents the data as entered.

| Input Field | Entered |
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| SERIAL NUMBER | 79011373 |
| LAW OFFICE ASSIGNED | LAW OFFICE 113 |
| MARK SECTION (no change) | |
| ARGUMENT(S) | |
| <p>The Office Action refuses registration of Applicant's mark on the basis of an alleged likelihood of confusion with the mark in U.S. Registration No. 2653702 (HONEYSUCKLE & Design). Specifically, the Examining Attorney asserts that the marks convey "highly similar commercial impressions" on the basis that both marks contain the term HONEYSUCKLE. In this case, however, both marks are composite marks with both literal and design or stylized elements. The fundamental rule in this situation is that the marks must be considered <i>in their entireties</i>. See <i>Massey Junior College, Inc. v. Fashion Institute of Technology</i>, 492 F.2d 1399, 181 USPQ 272 (C.C.P.A. 1974). It follows from that principle that likelihood of confusion cannot be predicated on dissection of a mark, that is, on only part of a mark. <i>In re National Data Corp.</i>, 753 F.2d 1056, 1058, 224 USPQ 749, 750-51 (Fed. Cir. 1985).</p> <p>The Examining Attorney then states, "The addition of the wording ROSE to the applicant's mark does not obviate the similarity between the marks because the applicant's mark incorporates the literal element of the registrant's mark entirely." In response, Applicant notes that it is well settled that a mark may entirely contain another mark without a finding of likelihood of confusion. See <i>In re Ferrero</i>, 479 F.2d 1395 (C.C.P.A. 1973) overturning rejection of registration for the mark TIC TAC for "candy" on the basis that it would be confused with the prior registered mark TIC TAC TOE for ice cream and sherbet; <i>The Conde Nast Pub, Inc v. Miss Quality, Inc.</i>, 507 F.2d 1404 (C.C.P.A. 1975) (no likelihood of confusion found between COUNTRY VOGUE for women's dresses and VOGUE for a women's fashion magazine.)</p> <p>In the next sentence, the Examining Attorney states, "it is well settled that the mere addition of a term to a registered mark does not obviate the similarity between the marks nor does it overcome a likelihood of confusion under Section 2(d)."</p> <p>However, it is also well settled that exceptions to the above stated general rule regarding additions or deletions to marks may arise if: (1) the marks in their entireties convey significantly different commercial impressions, or (2) the matter common to the marks is not likely to be perceived by purchasers as distinguishing source because it is merely descriptive or diluted. See, e.g., <i>Shen Manufacturing Co. v. Ritz Hotel Ltd.</i>, 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004); <i>In re Farm Fresh Catfish Co.</i>, 231 USPQ 495 (TTAB 1986); <i>In re Shawnee Milling Co.</i>, 225 USPQ 747 (TTAB</p> | |

1985); *In re S.D. Fabrics, Inc.*, 223 USPQ 54 (TTAB 1984).

Last, the Examining Attorney has disregarded Applicant's argument relating to commercial impression. In its previous response, Applicant explained that its mark is not the name of a flower, but that the unitary term "HONEYSUCKLE ROSE" has an associated meaning that refers to a term of endearment. Indeed, the enclosed definition of the term HONEYSUCKLE ROSE contains no reference to flowers. Also, the fact that there is a separate definition of the term HONEYSUCKLE ROSE clearly indicates that this is a unitary term with a completely separate meaning than the meanings of its component parts. As reflected in its use in music and film, the term HONEYSUCKLE ROSE has taken on cultural importance as evidenced by the numerous businesses that have appropriated this mark in their business names. (See enclosed website printouts).

In response to this argument, the Examining Attorney stated:

In this case, inquiry as to a likelihood of confusion must focus upon the goods for which the applicant seeks to register its mark and for which the registrant uses its mark (i.e., clothing and apparel). As such, inquiry as to the mark's significance in the field of music and film is inappropriate.

However, Applicant's reference to the use of the term HONEYSUCKLE ROSE in music and film is offered by Applicant to demonstrate the cultural significance of this term not in the music and film industries per se, but instead in the minds of the general consuming public, including consumers of the goods identified in the present application, and the effect of that cultural *meaning and connotation* on the commercial impression of the mark HONEYSUCKLE ROSE. When considering the similarity of the marks, "[a]ll relevant facts pertaining to the appearance and connotation must be considered." *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000).

In evaluating the similarities between marks, the emphasis must be on the recollection of the average purchaser who normally retains a general, rather than specific, impression of trademarks. *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). The cited mark is the name of a flower, and a flower is depicted in the design element of that mark. Accordingly, the average purchaser is likely to retain the image of the honeysuckle flower. By contrast, Applicant's mark evinces the unrelated cultural meaning of HONEYSUCKLE ROSE. Because of this cultural significance, consumers are likely to perceive and retain a completely different impression than they would when encountering the term "honeysuckle" alone.

Based on the arguments discussed above, there is no likelihood of confusion between the cited mark and Applicant's mark.

EVIDENCE SECTION

| | |
|--------------------------|-----------------------------------------------------------------|
| EVIDENCE FILE NAME(S) | \\TICRS\EXPORT\IMAGEOUT\7 90\113\79011373\xml3 \ROA0 002.JPG |
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| | |
|--------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| | <u>\ROA0 005.JPG</u> |
| DESCRIPTION OF EVIDENCE FILE | Web definition and screen captures of three businesses. |
| CORRESPONDENCE SECTION | |
| NAME | James A. Oliff |
| CONFIRM NAME | OLIFF & BERRIDGE, PLC |
| STREET | 277 South Washington Street |
| CITY | Alexandria |
| STATE | Virginia |
| ZIP/POSTAL CODE | 22314 |
| COUNTRY | United States |
| PHONE | 703-836-6400 |
| FAX | 703-836-2787 |
| EMAIL | email@oliff.com |
| AUTHORIZED TO COMMUNICATE VIA E-MAIL | Yes |
| SIGNATURE SECTION | |
| RESPONSE SIGNATURE | /William P. Berridge/ |
| SIGNATORY'S NAME | William P. Berridge |
| SIGNATORY'S POSITION | U.S. Attorney for Applicant |
| DATE SIGNED | 12/06/2006 |
| FILING INFORMATION SECTION | |
| SUBMIT DATE | Wed Dec 06 14:23:56 EST 2006 |
| TEAS STAMP | USPTO/ROA-151.200.228.163 -20061206142356208001-790 11373-360b9beecb23974cd4e 4fee45664512f3da-N/A-N/A- 20061206141502799861 |

PTO Form 1957 (Rev 9/05)

OMB No. 0651-0050 (Exp. 04/2009)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. 79011373 has been amended as follows:

Argument(s)

In response to the substantive refusal(s), please note the following:

The Office Action refuses registration of Applicant's mark on the basis of an alleged likelihood of confusion with the mark in U.S. Registration No. 2653702 (HONEYSUCKLE & Design). Specifically, the Examining Attorney asserts that the marks convey "highly similar commercial impressions" on the basis that both marks contain the term HONEYSUCKLE. In this case, however, both marks are composite marks with both literal and design or stylized elements. The fundamental rule in this situation is that the marks must be considered *in their entireties*. See *Massey Junior College, Inc. v. Fashion Institute of Technology*, 492 F.2d 1399, 181 USPQ 272 (C.C.P.A. 1974). It follows from that principle that likelihood of confusion cannot be predicated on dissection of a mark, that is, on only part of a mark. *In re National Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 750-51 (Fed. Cir. 1985).

The Examining Attorney then states, "The addition of the wording ROSE to the applicant's mark does not obviate the similarity between the marks because the applicant's mark incorporates the literal element of the registrant's mark entirely." In response, Applicant notes that it is well settled that a mark may entirely contain another mark without a finding of likelihood of confusion. See *In re Ferrero*, 479 F.2d 1395 (C.C.P.A. 1973) overturning rejection of registration for the mark TIC TAC for "candy" on the basis that it would be confused with the prior registered mark TIC TAC TOE for ice cream and sherbet); *The Conde Nast Pub, Inc v. Miss Quality, Inc.*, 507 F.2d 1404 (C.C.P.A. 1975) (no likelihood of confusion found between COUNTRY VOGUE for women's dresses and VOGUE for a women's fashion magazine.)

In the next sentence, the Examining Attorney states, "it is well settled that the mere addition of a term to a registered mark does not obviate the similarity between the marks nor does it overcome a likelihood of confusion under Section 2(d)."

However, it is also well settled that exceptions to the above stated general rule regarding additions or deletions to marks may arise if: (1) the marks in their entireties convey significantly different commercial impressions, or (2) the matter common to the marks is not likely to be perceived by purchasers as distinguishing source because it is merely descriptive or diluted. See, e.g., *Shen Manufacturing Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004); *In re Farm Fresh Catfish Co.*, 231 USPQ 495 (TTAB 1986); *In re Shawnee Milling Co.*, 225 USPQ 747 (TTAB 1985); *In re S.D. Fabrics, Inc.*, 223 USPQ 54 (TTAB 1984).

Last, the Examining Attorney has disregarded Applicant's argument relating to commercial impression. In its previous response, Applicant explained that its mark is not the name of a flower, but that the unitary term "HONEYSUCKLE ROSE" has an associated meaning that refers to a term of endearment. Indeed, the enclosed definition of the term HONEYSUCKLE ROSE contains no reference to flowers. Also, the fact that there is a separate definition of the term HONEYSUCKLE ROSE clearly indicates that this is a unitary term with a completely separate meaning than the meanings of its component parts. As reflected in its use in music and film, the term HONEYSUCKLE ROSE has taken on cultural importance as evidenced by the numerous businesses that have appropriated this mark in their business names. (See enclosed website printouts).

In response to this argument, the Examining Attorney stated:

In this case, inquiry as to a likelihood of confusion must focus upon the goods for which the

applicant seeks to register its mark and for which the registrant uses its mark (i.e., clothing and apparel). As such, inquiry as to the mark's significance in the field of music and film is inappropriate.

However, Applicant's reference to the use of the term HONEYSUCKLE ROSE in music and film is offered by Applicant to demonstrate the cultural significance of this term not in the music and film industries per se, but instead in the minds of the general consuming public, including consumers of the goods identified in the present application, and the effect of that cultural *meaning and connotation* on the commercial impression of the mark HONEYSUCKLE ROSE. When considering the similarity of the marks, "[a]ll relevant facts pertaining to the appearance and connotation must be considered." *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000).

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Based on the arguments discussed above, there is no likelihood of confusion between the cited mark and Applicant's mark.

Evidence

Evidence in the nature of Web definition and screen captures of three businesses. has been attached.

Evidence-1

Evidence-2

Evidence-3

Evidence-4

Correspondence Address Change

Applicant proposes to amend the following:

Original: KINOSHITA Jitsuzo 3rd Floor, Ogikubo TM Building 26-13, Ogikubo 5-chome Suginami-ku Tokyo 167-0051 JAPAN

Proposed: James A. Oliff of OLIFF & BERRIDGE, PLC, having an address of Suite 500 277 South Washington Street Alexandria, Virginia United States 22314, whose e-mail address is email@oliff.com, whose phone number is 703-836-6400 and whose fax number is 703-836-2787.

Response Signature

Signature: /William P. Berridge/ Date: 12/06/2006

Signatory's Name: William P. Berridge

Signatory's Position: U.S. Attorney for Applicant

Mailing Address: James A. Oliff

OLIFF & BERRIDGE, PLC

Suite 500

277 South Washington Street

Alexandria, Virginia 22314

Serial Number: 79011373

Internet Transmission Date: Wed Dec 06 14:23:56 EST 2006
TEAS Stamp: USPTO/ROA-151.200.228.163-20061206142356
208001-79011373-360b9beecb23974cd4e4fee4
5664512f3da-N/A-N/A-20061206141502799861



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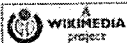
From Wikipedia, the free encyclopedia

Honeysuckle Rose could refer to:

- **"Honeysuckle Rose"**, a song from 1928 written by Fats Waller and Andy Razaf, considered a jazz standard.
- The name of Willie Nelson's famous touring bus.
- *Honeysuckle Rose*, the title to a 1980 movie, starring Willie Nelson, Amy Irving, and Priscilla Pointer.

This disambiguation page lists articles associated with the same title. If an internal link led you here, you may wish to change the link to point directly to the intended article.

Category: Disambiguation



This page was last modified 17:02, 20 June 2006.

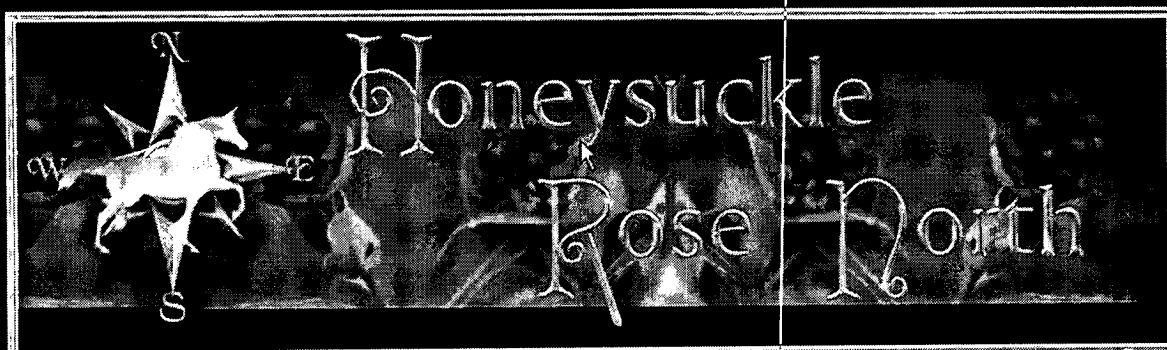
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Honeysuckle Rose Cottage

7751 Redroofs Road
Halfmoon Bay, BC Canada
604.885.6447
866.885.6407
(toll-free in Canada & United States)

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July and August are popular months for longer stays at the cottage, you might want to make your booking early to avoid disappointment.

Your hosts: Marguerite and Frances


The cottage is completely self contained, with a private entrance, and sleeps from 1 to 7 people comfortably. There is a private parking area. This is a great place for family gatherings or groups of friends. The garden is a perfect location for wedding photographs.

There are two bedrooms and a sleeping loft, a fully equipped kitchen and a cozy sitting room.



Welcome

Honeysuckle Rose Hotel



Honeysuckle Rose Victorian Shoppe